

HELEN T. AYERS  
ROGER QUINTAL

IBLA 82-57

Decided December 31, 1981

Appeal from decision of the Colorado State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease C-26545.

Affirmed.

1. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Termination

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

2. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Termination

Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. The postmark date of a rental payment is generally considered the date of mailing, unless there is satisfactory corroborating evidence to support the lessee's assertion that the mailing occurred at an earlier date. Mailing the rental payment 1 day before or on the anniversary date of the lease does not constitute reasonable diligence.

APPEARANCES: Norman H. Hirata, Esq., Torrance, California, for appellants.

## OPINION BY ADMINISTRATIVE JUDGE LEWIS

This appeal is taken from a decision dated September 21, 1981, by the Colorado State Office, Bureau of Land Management (BLM), denying a petition for reinstatement of oil and gas lease C-26545.

Rental for this lease was due in the Colorado State Office on September 1, 1981, for the year beginning on that date. The rental was not received until September 3. By notice dated September 4, 1981, BLM informed appellants that their lease had terminated effective September 1, the anniversary date, for failure to pay in advance the rental due on the lease. Appellants petitioned for reinstatement on September 17. BLM denied the petition, finding that the envelope containing payment was not postmarked until the afternoon of August 31, 1981, at Marina Del Rey, California, and payment could not reasonably be expected to reach the Colorado State Office on the next day.

[1] Failure to pay the annual rental for an oil and gas lease on or before the anniversary date of the lease results in the automatic termination of the lease by operation of law. 30 U.S.C. § 188(b) (1976). The Secretary of the Interior may reinstate oil and gas leases which have terminated for failure to pay rental timely only where the rental is paid within 20 days and upon proof that such failure was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1976). In absence of such proof, a petition for reinstatement is properly denied. See, e.g., Margaret Lee Pirtle, 54 IBLA 113 (1981); J. R. Oil Corp., 36 IBLA 81 (1978); Lone Star Producing Co., 28 IBLA 132 (1976).

[2] The showing of reasonable diligence necessary for reinstatement ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. 43 CFR 3108.2-1(c)(2). According to appellant Ayers' petition for reinstatement, the check was dated August 24, 1981, and mailed the next day. In the statement of reasons it is asserted that the envelope containing payment was left in appellant Ayers' mailbox on August 25, 1980, for pickup by her neighborhood mailman. Appellants allege that in the normal course of business this envelope should have reached the Colorado State Office on August 27, 1981. Appellants state: "Due to the unusual delays in the mails, we are advised that the remittance of the rental was not received until 7:45 A.M. on September 3, 1981. This was an unusual delay of 4 days from the normal course of mail between Los Angeles, California and Denver, Colorado" (Statement of Reasons at 4).

Appellants state that payment was mailed on August 25, 1981. The postmark on the envelope is August 31, however. This Board has repeatedly held that mailing the rental payment 1 day before or on the anniversary date of the lease does not constitute reasonable diligence. See, e.g., Martin Mattler, 53 IBLA 323 (1981). The Board has held also that the postmark date of a rental payment is generally considered the date of mailing, unless there is satisfactory corroborating evidence to

support the lessee's assertion that the mailing occurred at a date earlier than that indicated by the postmark. Margaret Lee Pirtle, *supra*; David R. Smith, 33 IBLA 63, 66 (1977). One type of satisfactory evidence is a statement by a postal official explaining the possibility of a delay in processing mail from a particular location on the day that it is asserted mail was deposited there. No explanatory statement has been submitted from which it could be gathered that the delay here attributed to the post office was an unusual one. Since appellants offered no other evidence to show that the payments were mailed on August 25, 1971, BLM was correct in regarding the postmark date as the mailing date. Additionally we can find nothing in the record to support a finding that the failure to pay timely was justifiable within the meaning of the reinstatement provision. See Louis Samuel, 8 IBLA 268, 273-74 (1972).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Anne Poindexter Lewis  
Administrative Judge

We concur:

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Bruce R. Harris  
Administrative Judge

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Douglas E. Henriques  
Administrative Judge

